Five Haynes and Boone Lawyers Author Chapters in Fund Finance 2021

By Ellen Gibson McGinnis, Richard D. Anigian, Deborah P. Low | January 22, 2021

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Haynes Boone lawyers Ellen McGinnis, Rick Anigian, Emma Russell, Deborah Low and Emily Fuller contributed to "Global Legal Insights to Fund Finance 2021," produced in partnership with the Fund Finance Association.

The newly published book covers legal trends and developments in the greater fund finance markets and gives law firms, financial institutions, funds and investors comprehensive insight into 16 global jurisdictions.

McGinnis, partner and co-chair of Haynes Boone's Fund Finance Practice Group, teamed with Anigian, a partner in the firm's Litigation Practice Group, to write a chapter titled "Enforcement: Analysis of lender remedies under U.S. law in subscription-secured credit facilities."

The chapter considers the idea that lenders must have a sound understanding of their legal rights about enforcing remedies against a borrower and its limited partners under a subscription-secured credit facility to assess risk, price the risk, and properly document the facility. Here is an excerpt:

> Lenders who adequately plan for an event of default and exercise of remedies are more likely to prevail against the borrower and its investors when enforcing rights. Lenders must be prepared to execute every step of their enforcement strategy, beginning with the occurrence of an event of default, through the decision to accelerate the obligations, to the exercise of remedies, and, finally, to recovery of payment.

Russell, partner and head of the Finance Practice Group in the firm's London office, teamed with Associate Emily Fuller to author a chapter titled "Comparing the European, U.S. and Asian fund finance markets," which considers the differences between the European, U.S. and Asian approach to fund finance, both from a high-level market perspective and the contrasting nuances of transactions. Low, a partner in Haynes Boone's New York office, was among colleagues at the firm who contributed to the chapter. Ben Griffiths with MUFG Investor Services also contributed. Here is an excerpt:

> Historically in Europe, the fund finance market originated with a few banks offering products on a bilateral basis to existing customers who required more liquidity, and the market was very much relationship-driven. Because of the existing relationship between bank and borrower, the banks would make an effort to structure the deals without the need for investor consents or amendments to the limited partnership agreements (LPAs), and often offered these facilities on an unsecured and/or uncommitted basis. The European banks carried out limited due diligence on the creditworthiness of, and potential enforceability against, investors.
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> Recently, however, the European lender landscape has become saturated by the emergence of U.S., Australian, Asian and new fund finance market entrant European

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banks competing with the long-standing European bank players already in this space, and it is estimated that there are now more than 40 lenders offering this product in the European market. This competition has led to pricing pressure for banks operating in the European market and familiarity with fund finance products, as well as cheaper financing.

“Our lawyers continue to be thought leaders who closely track developments in fund finance markets worldwide, as illustrated by our contributions to this important publication,” McGinnis said.

Haynes Boone is an international corporate law firm with offices in Texas, New York, California, Charlotte, Chicago, Denver, Washington, D.C., London, Mexico City and Shanghai, providing a full spectrum of legal services in energy, technology, financial services and private equity. With more than 575 lawyers, Haynes Boone is ranked among the largest U.S.-based firms by The National Law Journal, The American Lawyer and The Lawyer. It also was recognized across the board for excellence in the BTI Consulting Group’s 2020 “A-Team” report, which identifies the law firms that in-house counsel commend providing superior client service.

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